Superfund/Oil Program Implementation Manual FY 02/03

Chapter I: Program Goals and Priorities

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CHAPTER I
PROGRAM GOALS AND PRIORITIES

I.A INTRODUCTION

The focus of the Superfund program is to maximize the protection of human health and the environment through fast, effective cleanup of priority hazardous waste sites and releases. To accomplish the greatest number of cleanups possible and make the best use of limited resources, maximizing Potentially Responsible Party (PRP) participation in cleanups is essential. The most important principle of the Superfund program is that the worst sites are cleaned up first. In addition, the acceleration of site cleanup and construction completion at sites on the National Priorities List (NPL) is integral to the success of the program. Post construction activities, including Five Year Reviews, operating Fund-financed groundwater restoration systems, monitoring operation and maintenance performed by States, PRPs and Federal facilities, implementing and monitoring institutional controls, and deleting sites from the NPL, are important to ensure the long term protectiveness of completed sites and remedies. Implementation of the program is facilitated by a strong collaboration with the States, Indian Tribes, and other Federal agencies. Partnerships are also an integral part of the Brownfields program. Furthermore, collaboration with the Department of Defense (DoD) will be necessary as the Agency continues to assist in assessing base closure properties.

The Superfund program will continue to employ Environmental Indicators (EIs) as a crucial tool for evaluation and communication and, in Fiscal Years (FY) 02 and 03, the Superfund and Oil programs will continue to implement the Government Performance and Results Act (GPRA) of 1993. This Superfund Program Information Manual (SPIM) is a biennial document covering FY 02 and 03. This will synchronize the SPIM with the Agency's two year planning cycles.

I.A.1 Superfund and its History

The Superfund program began when Congress passed the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) in 1980. Prior to this, there was no authority for direct Federal response to hazards posed by abandoned and uncontrolled hazardous waste sites. Existing environmental laws, such as the Resource Conservation and Recovery Act (RCRA), provided regulatory requirements to address present activities and prevent future catastrophes, but lacked authority to allow Federal emergency and long-term responses to past disposal problems.

CERCLA is unique in that it provided the first Federal response authority to address the problem of uncontrolled hazardous waste sites. CERCLA, for the first time, required EPA to step beyond its traditional regulatory role and provide response authority to clean up hazardous waste sites.

In October 1986, Congress reauthorized CERCLA by enacting the Superfund Amendments and Reauthorization Act (SARA). The enactment of SARA resulted in the following changes to the Superfund program:

- Increased the size of the Trust Fund to $8.5 billion and refined its finances;
  (**Note:** The Fund was largely financed by a tax on crude oil and 42 commercially used chemicals. The taxing authority expired December 31, 1995)

- Stressed the development and use of permanent remedies;

- Provided stronger enforcement and settlement tools;

- Increased State involvement in the Superfund Program; and

- Included Title III, a freestanding statute, that created the Emergency Planning and Community Right-to-Know Act (EPCRA). EPCRA is designed to help communities prepare to respond in the event of a chemical emergency, and to increase the public's knowledge of the presence and threat of hazardous chemicals.

The National Oil and Hazardous Substances Pollution Contingency Plan (NCP) was revised based on SARA and is the major regulatory framework that guides the Superfund response effort. The NCP outlines a step-by-step process for implementing Superfund responses and defines the roles and responsibilities of EPA, other Federal agencies, States, private parties, and the communities in response to situations in which hazardous substances are released into the environment. In 1992, EPA introduced the Superfund Accelerated Cleanup Model (SACM). SACM was designed to expedite the cleanup of uncontrolled waste sites and redefine the way Superfund progress is measured.

The Superfund program is comprehensive, yet flexible and innovative. Its mission is both immediate and long-range. Its focus is specific enough to handle individual site cleanup with precision, yet broad enough to encourage advances in a relatively new scientific and technical field. Today the hazardous waste problem in the United States remains large, complex and long-term.

The Omnibus Reconciliation Act of 1990, which extended Superfund authority from FY 90, expired in 1994. Since 1994, many Congressional bills have been advanced to reauthorize the program, but none have been enacted. Many aspects of the program that have been subject to reauthorization proposals have been addressed through Superfund administrative reform. Through the act of appropriations, SARA authority for the Superfund program has been extended annually.

I.B CURRENT PROGRAM PRIORITIES

I.B.1 Government Performance and Results Act (GPRA)

The Government Performance and Results Act (GPRA) holds federal agencies accountable for using resources wisely and achieving program results. GPRA requires agencies to develop plans for what they intend to accomplish, measure how well they are doing, make appropriate decisions based on the information they have gathered, and communicate information about their performance to Congress and to the public. GPRA requires agencies to develop a five-year Strategic Plan, which includes a mission statement and sets out long-term goals and objectives; Annual Performance Plans, which provide annual performance commitments toward achieving the goals and objectives presented in the Strategic Plan; and Annual Performance Reports, which evaluate an agency's progress toward achieving performance commitments. Please refer to Appendix G, "Government Performance and Results Act (GPRA)," for a definition of Program Results Codes (PRCs), Annual Performance Goals (APGs), and Annual Performance Measures (APMs).

I.B.2 Superfund

The continued focus of the Superfund program in FY 02/03 is to maximize the protection of human health and the environment through fast, efficient cleanup of priority hazardous waste sites and releases. Protecting public health and the environment, promoting a fundamentally fairer Superfund program, maximizing program effectiveness and efficiency, building Superfund partnerships, and encouraging a customer orientation are Superfund's highest priorities for FY 02/03. Superfund also shall work toward reauthorization and show program progress through Superfund Reforms and compliance with GPRA.

a. Protect Public Health and the Environment

EPA is committed to increasing the number of NPL construction completions (see Appendix B for the definition of construction completion). To accomplish this objective, the Agency will ensure that available resources are disbursed in a fiscally sound manner—according to the risk prioritization scheme, and that appropriate contract vehicles (including performance based contracts and IAGs) are available. In addition, the Superfund program will provide real time policy calls to promote efficient cleanup. Maximizing PRP involvement will be imperative to meeting this goal.

i. Removal Actions

The goal of EPA's emergency response and removal program is to provide quick response to immediate threats to public health and the environment from releases of hazardous substances whenever and wherever they occur. EPA will continue to enhance its emergency response infrastructure through procurement of state-of- the-art response equipment and continued training and exercising of our response personnel. EPA will also ensure that the appropriate resources and contract vehicles are available to conduct necessary removal actions.

ii. Construction Completions

The current goal is to accomplish 895 construction completions by the end of FY 2002. There are a sufficient number of sites with final Record of Decision (RODs) signed to meet this goal. Sites in the Remedial Design/Remedial Action (RD/RA) stages will be efficiently managed to ensure work continues in a timely manner through to construction completion. Regions and States must continue to work together to identify opportunities for expediting construction completions and response actions.

The primary mission of the Superfund Federal facilities program is to ensure that the hazardous waste sites owned or operated by the Federal government are addressed and cleaned up as quickly as possible. Regional efforts should be focused on getting to completion of construction activities at Federal facilities whether they are accomplished under remedial or removal authority. Meeting these goals will help build the program's credibility, which is vital to Superfund's long-term success.

iii. Innovative Technologies

Environmental technology development and commercialization are a top national priority for this Administration. EPA is committed to encouraging the use of new or innovative technologies for contaminated soils and groundwater. Over the next decade, the Superfund program and other Federal agencies will spend billions of dollars each year to cleanup sites contaminated with hazardous wastes. This commitment will require the use of a wide range of site remediation processes. While existing technologies that characterize and remediate contaminated sites have been successful, the investment in site clean up provides new opportunities for the development of less expensive and more effective solutions.

The Agency has made considerable progress using new technologies in Superfund. More than half of the recent remedial cleanup decisions for source control call for technologies that were not available when the law was reauthorized in 1986. The large cleanup needs remaining in EPA programs, as well as the formidable future requirements for State and other Federal agencies, provide a continuing impetus to find more effective and less costly solutions.

The unique and varying problems posed by contaminated sites present a challenge that requires knowledge and techniques from different technical disciplines. The solutions to these problems are not to be found in existing design manuals or standards of practice. Rather, EPA is developing procedures as it goes along by creatively applying technologies from various industrial applications to unique site conditions. This field of hazardous site remediation is rapidly evolving and requires considerable effort to remain informed of recent developments.

EPA is attempting to expand the participation of responsible parties in technology development by altering the Agency's historical role and working more closely with the private sector as a partner with shared objectives. Conventionally, EPA has been viewed primarily as a regulator, permit issuer, and enforcer. These functions have kept it at arms' length from industry, which tended to view the Agency with a negative bias. EPA has been working to build new relationships with the private sector that are based on other EPA roles including technology broker, researcher, and grant maker. These cooperative efforts are expected to result in better-directed research and more joint demonstration projects. A number of significant collaborative endeavors in the areas of technology development and evaluation are currently under way.

The Agency is also very committed to the dissemination of information on technology development, evaluation and deployment. Electronic information resources offer the best hope for keeping pace with rapid developments in this field. The Clean-Up Information (CLU-IN) web site at *http://clu-in.org* offers waste professionals a rich source of current information on technologies and markets. The TechDirect monthly electronic-mail service offers subscribers up-to-date information on new remediation technology products and services developed by EPA.

Federal facility sites provide an excellent testing ground for assessing and demonstrating the use of innovative technologies. Many Federal facilities offer a number of benefits: sole responsible party; acknowledged liability; controlled sites; funding; and willingness. For these reasons, the Agency expects to see more public-private partnerships established at Federal facility sites.

iv. Post Construction Completion

As a result of the increase in construction completion sites, the post construction completion workload required to ensure that the Superfund response actions remain protective for human health and the environment also is increasing. Post construction completion encompasses a number of discrete but related activities including: Five Year Reviews; implementation and management of institutional controls; operation and maintenance and long-term response actions; optimization of remedies; and deletion of sites from the NPL. EPA, States, Federal facilities and PRPs all play an integral role in performing post construction activities. External stakeholder interest in post construction activities is high. The EPA Inspector General has completed reviews of the program's Five Year Review performance and corrective actions have been identified and implemented. Resources for the Future (RFF) and other external organizations have completed research studies on long term stewardship. In its report on the projected ten year cost of the program, RFF is critical of the Agency's post construction efforts, particularly in the quality of Five Year Review reports and the implementation and management of institutional controls.

Five Year Reviews are required by statute and program policy, generally when residual contamination remains on site after cleanup. Five Year Reviews provide an opportunity to evaluate remedies, correct problems or deficiencies, and adjust operations and maintenance where necessary. Five Year Reviews are required at over 800 sites as of January 2001. The program completed 672 reviews through September 2000 with 180 in FY 2000. Between 150 and 180 reviews per year are scheduled over the next several years. The Agency committed to eliminate the backlog of overdue reviews by the end of 2002. Revised guidance on conducting Five Year Reviews is nearing completion and training has been, and will continue to be, provided to the regions with the goal of improving the quality of the Five Year Reviews and the resulting reports.

Institutional controls are administrative and/or legal mechanisms intended to minimize the potential for exposure to contamination and protect the integrity of a remedy. Although institutional controls are recognized as critical remedy components, the challenge is that they are often implemented, monitored and enforced by an entity other that those responsible for the cleanup. Examples of institutional controls include zoning restrictions, excavation and building permits, easements, covenants, deed notices, and advisories. As a matter

of policy, institutional controls are necessary if a site cannot support unrestricted use and unlimited exposure due to residual contamination and/or the presence of engineered remedy components that may be damaged by uncontrolled future site activities. Institutional controls can be used at any point in the cleanup, however, implementation frequently lag behind the completion of physical remediation. Institutional controls do not need to be in place to achieve construction completion, however, delays in implementing institutional controls will impact the ability to delete sites from the NPL. Guidance has been developed to aid with the identification, evaluation and selection of institutional controls and guidance is being developed to aid with the implementation, monitoring and enforcement of ICs; estimating the costs of ICs; and planning for ICs. In addition, materials for community stakeholders and an institutional control tracking system are under development.

Operation and maintenance (O&M) is an important component of a Superfund response to ensure that the remedy performs as intended. Actions range from maintaining engineering containment structures (e.g., landfill covers) to operating groundwater remediation systems. O&M is the responsibility of the Federal facilities, PRPs or the States. EPA is responsible for assuring that the work is adequately performed for the life of the project. One exception is for Fund-financed groundwater remediation systems where EPA retains operating responsibility for up to ten years (called Long Term Response Actions (LTRA)) prior to transferring the system to the State. Many sites are nearing the end of the ten year period and regions must prepare these sites for transfer. A guidance summarizing best practices is under development.

Once groundwater remediation systems have been operating, opportunities may exist to optimize or more efficiently operate the system. EPA has conducted or is planning to conduct 20 pilot optimization studies during FY 2001. Preliminary results indicate a potential to improve system performance and reduce costs. Once implemented, optimization reviews should provide assurances that these systems are operating efficiently prior to transfer to the State for long term operations. Optimization protocols also can be made available to PRPs and Federal facilities.

Sites can be deleted from the NPL once all response actions are complete and all cleanup levels have been achieved. As of January 2001, 230 sites were deleted from the NPL. Expeditious deletion of sites is a post construction emphasis. In FY 2001 and beyond, EPA plans to delete 30 sites per year.

b. Promoting a Fairer Superfund Enforcement Program

The Superfund enforcement program GPRA goals and measures will continue to ensure a fairer, more effective, and more efficient Superfund program. The program goals continue to focus on maximizing PRP participation, reducing transaction costs, entering into fair settlements, addressing past costs, and eliminating barriers to redevelopment. The major areas of emphasis for the Superfund enforcement program include the following:

- **Maximizing PRP Involvement/Enforcement First:** To leverage the number of cleanups that can be accomplished, maximizing PRP participation is a priority. Key areas of emphasis are early initiation of PRP searches, completing negotiations in a timely manner, and maximizing PRP-lead cleanup activities. EPA will continue to seek to achieve the GPRA goal of 70 percent PRP participation level in new remedial actions starts at Superfund sites, which include NPL and NPL Equivalent sites. As a result of the enforcement first strategy, PRPs have undertaken the majority of new cleanup actions over the past years, leveraging Superfund resources to maximize cleanups far beyond what could be done if only the Trust Fund was used. Early involvement by PRPs ensures that their transaction and cleanup costs are kept to a minimum.

- **Reducing Transaction Costs through *De minimis* Settlements:** EPA will continue to pursue §122(g) *de minimis* settlements, and resolve the potential liability of qualified small volume waste contributors, at the earliest date possible.

- **Entering Into Fair Settlements/Orphan Share Offers:** EPA will compensate a portion of the Superfund cleanup costs attributable to parties that are financially insolvent as a way to ensure that remaining viable PRPs are not asked to pay for substantially more than their share of the site costs. This will also apply to small volume waste contributors seeking and obtaining *de minimis* settlements with the Agency.

- **Addressing Past Costs > $200,000:** For cost recovery, the emphasis will be on addressing all sites with total outstanding costs greater than $200,000 prior to the expiration of the Statute of Limitations (SOL), and encouraging the regions, where available resources permit, to address high dollar cases and sites with non-settling, or non-complying parties that could be targeted for cost recovery action.

- **Eliminating Barriers to Redevelopment/Assessing Request for Prospective Purchaser Agreements and Comfort/Status Letters:** EPA will evaluate all completed requests for prospective purchaser agreements and comfort/status letters to assist in the removal of liability barriers for sustainable development/Brownfields initiatives.

- **Responsible Fiscal Management/Implementing the PRP Oversight Reform:** The purpose of the reform on PRP oversight is to conduct appropriate and effective PRP oversight while still ensuring that PRPs conduct high quality cleanups and the public's interest is protected. In addition, the regions will place a high priority on sound fiscal management by managing and collecting Superfund accounts receivable. To accomplish this, program focus will be on:

    - Maintaining prompt, current and accurate oversight billing;
    - Maximizing collections of outstanding monies due the Superfund Trust Fund;
    - Continuing to improve communications with PRPs by focusing on efforts to engage in open dialogues with PRPs that have settlements with EPA as a means to promote appropriate oversight that ensures the development and implementation of protective cleanups; giving careful consideration to the associated costs being charged to PRPs; and maximizing EPA recovery of oversight costs; and
    - Resolving all outstanding collection disputes, and refering those cases that are not resolved to the U.S. Department of Justice (DOJ) for collection.

- **Compliance with Orders/Settlements:** EPA will continue to monitor compliance of PRP performance and payment obligations under administrative orders, consent decrees, and judgments; ensure compliance; and address substantial noncompliance in a timely manner.

- **Establishment and Disbursement from Special Accounts:** EPA will continue to make greater use of Special Accounts and place the funds received from cashout and cost recovery settlements into Special Accounts. All funds in a Special Account must be applied to the direct costs of the response covered by the settlement. Since these accounts accrue interest, the total amount of money available from the accounts will increase, providing EPA with more money to: 1) pay for part of an EPA led response; 2) defray costs EPA incurs at a PRP led site (e.g., past costs or oversight costs); or 3) help pay the costs of a PRP led response.

- **Alternative Dispute Resolution**: EPA is expanding its use of ADR as a way to reduce the costs of achieving settlement with PRPs. PRPs who choose this alternative should see dramatically reduced transaction costs compared to what would have been encountered during litigation. Also, ADR can be used in other contexts (e.g., disputes with States regarding cleaning up sites).

- **Equitable Issuance of UAOs**: EPA will issue UAOs to the maximum manageable number of PRPs wherever there is sufficient basis to include them. Issuance of these UAOs will compel those PRPs to participate in, and share the cost of, the specific response actions. The participation of these PRPs, even if only through a financial contribution, will reduce the portion of the cleanup cost that is borne by PRPs who have settled with EPA.

c. Maximizing Program Effectiveness and Efficiency

To maximize the effectiveness and efficiency of the Superfund program during FY 02/03, EPA HQ and regions will work to improve the implementation of the program based on the following processes:

- Develop appropriate long-term contract strategies;
- Continue to improve WasteLAN for project, program, and enforcement management of Superfund, and ensure that there are subject matter experts for key areas;
- Enhance resource management controls; and
- Strengthen the program by incorporating quality assurance, peer review, and program evaluation components into rule makings, guidances, and policies.

i. Site Assessment

Assessing the worst sites first continues as a national priority. The regions should identify the sites posing the highest risk or potential risk and develop a strategy to assess those sites in a timely manner, while balancing their other site assessment needs. The continued assessment of sites potentially affected by asbestos contamination from the Libby, Montana mine is a top priority. Further, regions should continue to work with the States and Tribes on the Government Accounting Office (GAO) survey universe to identify who will take the lead to assess the sites and determine what work needs to be done.

High risk sites are not limited to the sites potentially affected by Libby asbestos contamination and GAO sites. Some will be recently identified sites, sites earlier in the site assessment process, or previously deferred RCRA sites. The regions should ensure the appropriate investigation of sites of Tribal concern including sites in or near Indian Country. While assessing the worst sites first, the regions also need to ensure that the backlog of sites needing Preliminary Assessments (PAs), Site Inspections (SIs), or Expanded Site Inspections (ESIs) does not grow unacceptably. The regions should consider integrating assessments to reduce cost and time to assess sites. Regions should continue the use of pre-CERCLIS screening to assure only appropriate sites are placed in CERCLIS/WasteLAN.

To better accomplish the national priorities, the regions should continue negotiating work share agreements with individual States (and Tribes if applicable). This will help divide up the site assessment work and potentially enhance relations with the States and Tribes. This process will also serve to identify the current lead agency for the public.

Given sizeable workloads and constrained resources, regions are encouraged to fund special projects designed to reduce the time and/or costs of assessing sites without compromising the integrity of the site assessment decisions. Regions must obtain concurrence from OERR if more than 10 percent of annual site assessment funding is used for special projects. Regions performing special projects are responsible for communicating the scope of these projects to other EPA Regional and HQ site assessment staff.

ii. Base Closures

Under the Base Realignment and Closure Acts (BRAC) of 1988, 1991, 1993, and 1995, 205 military installations were scheduled for closure or realignment. Of this total, 108 are part of the Fast Track Cleanup Program, and of those, 33 site are on the NPL, and there are a number of non-NPL sites requiring some degree of decontamination. The Agency continues to assist DoD in assessing these properties, accelerating cleanup actions wherever possible, listing sites on the NPL when appropriate, and ensuring that remedies selected reflect the views of the affected communities surrounding the sites. HQ and Regional managers must work with DoD, Tribal, State, local governments, and private interests to expedite cleanup and support property transfer, reuse and economic development.

Although the EPA/DoD MOU which provides support to the BRAC program expires September 30, 2002, under CERCLA, in FY 03 EPA will still have ongoing statutory commitments at these installations (oversight, technical assistance, and property transfer responsibilities). EPA also serves as an asset to Tribes, States, local governments, redevelopment authorities, and to affected communities.

iii. Lead-based (Pb) Paint and Property Transfer at BRAC Installations

Questions concerning the appropriate response to the potential release of lead (Pb) in soil as a result of the historic use of lead-based paint (LBP) is an issue that could delay the completion of cleanup and the transfer of property at Base Realignment and Closure (BRAC) installations. As a policy issue, however, it is not just limited to BRAC properties. This topic was discussed by the Defense Environmental Response Task Force (DERTF) during FY 1997.

Examples of issues that have arisen on LBP include:

- Type and quantity of information required to support the CERCLA 120(h)(3) covenant;
- Application of CERCLA and Title X (including Toxic Substance Control Act (TSCA) Section 403) in residential areas;
- The need for a workable approach for non-residential/industrial areas including areas where children may be present (e.g., recreational areas); and
- Language and basis for regulator concurrence on Finding of Suitability of Transfer (FOSTs) and Finding of Suitability of Lease (FOSLs).

In 1999, the Department of Housing and Urban Development (HUD) and EPA continued to move forward to promulgate regulations under the Residential Lead Based Hazard Reduction Act of 1992 (Title X). In FY 99, HUD finalized the 1012/1013 rule which implements the sections under Title X and ensures that housing receiving Federal assistance and Federally owned housing that is sold does not pose LBP hazards to young children. The 1012/1013 rule became effective in September 2000. In December 2000, EPA finalized the TSCA 403 rule which defines lead hazard standards. The effective date for this rule is March 6, 2001. (EPA issued policies under CERCLA and TSCA on LBP in July 1994.) In 1994, DoD issued a policy to the Services to comply with the requirements of Title X. This policy was rescinded when the DoD/EPA interim field guide was signed in December 1999. State governments continue to propose and enact LBP regulations, policies and guidance. EPA and DoD both want to ensure that the forthcoming regulations are applied in a manner which is fully protective of human health and the environment. DoD intends to comply with these regulations in such a manner as to satisfy CERCLA 120 (h)(3) concerns. The objective for residential areas is to achieve an adequate level of CERCLA equivalence by use of the soon to be released HUD Title X regulations, existing HUD guidelines, EPA's forthcoming TSCA Section 403 Rule, and EPA's existing guidance on LBP.

In March 1999, EPA and DoD signed a plan of action on how both agencies will handle lead contamination due to LBP at residential and nonresidential properties located on BRAC facilities. Both EPA and DoD agreed that for residential properties, Title X procedures provide efficient, effective, and legally adequate framework for addressing LBP hazards in residential areas and that, as a matter of policy, CERCLA/RCRA will not be applied except in limited circumstances. To assist EPA and DoD personnel to understand and comply with current HUD, EPA, and Occupational Safety and Health Administration (OSHA) regulations on LBP, EPA and DoD jointly developed a field guide. In December of 1999, EPA and DoD signed off on the Interim Lead-Based Paint Field Guide. The guide provides a framework for EPA and DoD project managers to manage and control LBP at BRAC facilities. EPA has received comments from the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) and will review and incorporate the comments in the interim field guide. EPA is preparing a lead-base paint policy statement for Federal facilities which will incorporate model language for EPA's comments on FOST.

iv. Environmental Indicators

In 1989, EPA's Administrator directed all EPA programs, including Superfund, to develop Environmental Indicators (EIs) to document and communicate environmental progress. Superfund EIs are designed to communicate that the true measure of the program's success is tangible progress in protecting human health and the environment through incremental site cleanup activities. EIs can show how, and to what extent, Superfund cleanups are reducing risks to people and the environment.

Superfund's current environmental indicators are program-based indicators that measure efforts at each stage of Superfund's "cleanup pipeline" toward addressing hazardous waste problems and achieving established goals. The Superfund program uses four indicators to measure its progress. These indicators are:

- **Populations Protected** quantifies efforts to protect people and the environment from immediate threats—including supplying safe water, securing sites, and relocating threatened populations.

- **Cleanup Technologies Applied** characterizes the volumes of waste handled and the application of appropriate treatment and containment technologies to hazardous site cleanup.

Human Exposure Under Control: Are all identified human exposure pathways from contamination at the site under control or below health-based levels for current land and/or groundwater use conditions? "Under control" means that adequately protective controls are in place to prevent any unacceptable human exposure under current land- and groundwater-use conditions only. This environmental indicator does not consider potential future land- or groundwater-use conditions nor ecological receptors.

- **Migration of Contaminated Ground Water Under Control**: Is the migration of contaminated groundwater from the site being controlled through engineering remedies or natural processes?

Data collected via these four indicators show how Superfund cleanup activities are continually and incrementally reducing the threats that hazardous waste poses to people and the environment.

v. Effective Contract Management

Good contract management is a Superfund priority, as well as an Agency-wide priority. In this regard, the Agency established a national workgroup to develop a new Superfund acquisition strategy for the year 2000 and beyond. The Contracts 2000 strategy builds upon the Long Term Contracting Strategy (LTCS) paradigm. The new strategy retains two key tenets of LTCS – a one-program approach and decentralization of contracts management to the regions – and keeps the LTCS contracts infrastructure in place.

The major goals of Contracts 2000 are: 1) balancing national consistency with regional flexibility; 2) introducing more competition into the contracting process; 3) increasing small, small disadvantaged, and women-owned business participation in the Superfund contracting program; 4) adopting new contracting vehicles and methods such as performance-based contracting, and fixed price contracting; and 5) developing "performance focused" statements of work for all of the follow-on contracts.

The Agency is currently in the implementation phase of the Contracts 2000 process. We have finalized national implementation plans for the START (Superfund Technical Assessment and Response Team), ERRS (Emergency and Rapid Response Services), ESS (Enforcement Support Services), ROC (Regional Oversight Contracts), and ESAT (Environmental Services Assistance Teams) contracts and developed a strategy for acquiring Superfund design and construction services when the current Response Action Contracts (RACs) expire starting in 2005.

d. Building Superfund Partnerships

FY 02/03 goals to support building Superfund partnerships and leveraging existing resources are:

- Provide tools for regions to use to promote and continue early community involvement in key cleanup decisions, specifically regarding land use, risk assessment, and RODs;

- Work with State, Tribal, and business associations to determine ways to improve their capabilities to clean up hazardous substances and respond to spills; and

- Implement a cooperative program with oil companies to prevent and respond to leaking above ground tanks.

Initiatives include continuing the implementation of the Brownfields Economic Redevelopment Initiative, enhancing the State/Tribal role, providing States/Tribes with increased funding allocation decision authority, clarifying the policy for NPL listings and deletions of sites based on RCRA deferral, and providing States and Tribes with an increased role in remedy selection.

i. Enhanced State and Tribal Capabilities

States and Indian Tribes are key partners in the cleanup of Superfund hazardous waste sites. Regions should continue their efforts to enhance the role of States and Tribes in the Superfund program. HQ strongly encourages the use of the full range of cooperative agreements to provide financial support for State and Tribal Superfund programs and site-specific involvement in NPL and non-NPL sites. In particular, core funding is critical to develop, maintain and enhance States' and Tribes' capacity to manage and implement CERCLA responses.

During FY 99-00, all regions participated in the National effort to pilot the "Plan to Enhance the Role of States and Tribes in the Superfund Program." In a January 2001 memorandum and accompanying evaluation report, HQ shared the lessons learned from pilot implementation with the regions, and provided direction for future on-going efforts to enhance EPA's partnership with States and Tribes in the implementation of Superfund.

In FY 00, OERR developed four new annual performance measures (APM) for Tribes under GPRA Goal 5.2.2: Respond to Superfund Hazardous Waste Sites, Objective 1. These were implemented as reporting APMs in FY 01. OERR will continue to emphasize increasing the number of Indian tribes participating in the Superfund program, as expressed through the number of tribes supported by Superfund cooperative agreements (APM 1). This will be evidenced by an increase in the number of site assessments (PA/SI) conducted in Indian Country (APM 2), the amount of funding for building tribal capacity (APM3), and the percentage of Superfund sites impacting Indian country where a tribe is involved as either the lead or support agency (APM 4). OERR is manually gathering the information directly from the regions to establish a baseline for these performance measures. During FY 01, OERR will review options to determine how to modify WasteLAN to capture the information electronically.

ii. Superfund Block Funding/EPA Performance Partnership Grants

EPA has developed an Agency-wide system for providing States/Tribes with increased funding allocation decision authority. The National Environmental Performance Partnership System (NEPPS) establishes a structure for Performance Partnership Grants (PPG), a single grant made to a State or Tribe from grant funds allocated and otherwise available for existing categorical grants programs. PPGs are voluntary and provide States and Tribes with the option to combine funds from two or more categorical grants into one or more PPG(s).

By statute, Superfund monies cannot be included in PPGs, however Superfund is utilizing consolidated (aka, block) cooperative agreement funding to move in a direction consistent with PPGs; block funding awards have been made to twelve States and three Tribes. EPA will be working to encourage further progress toward the goals of flexible funding within the context of strong program commitments to Superfund outcomes. The Superfund cooperative agreement regulation, Subpart O, is being revised (in FY 2001) to facilitate use of consolidated funding where appropriate.

iii. Clarifying Policy for NPL Listings

During FY 97, OSWER issued two policy statements for listing sites on the NPL, which increased the role of States and Tribes in NPL site selection. The November 14, 1996, policy memorandum entitled "Coordinating with the States on National Priorities List Decisions" requires regions to query States/Tribes regarding their support for NPL listing as early as practical, ideally prior to initiating a Hazard Ranking System (HRS) package.

A follow-up memorandum was issued on July 25, 1997, entitled "Coordinating with the States on National Priorities List Decisions -- Issue Resolution Process." This policy calls for formal correspondence and high-level negotiations between the region and State, and provides a process for the AA SWER to decide any cases that can not be resolved directly between the region and State/Tribe. Both of these policies will remain in effect in FY02/03.

The Superfund program has also streamlined the listing process. This includes increased early technical assistance, and in some cases having the HQ Quality Assurance contractor prepare the document record.

There were four combined Proposed and Final NPL Listing rules that were published during FY 00. Current plans are for quarterly Proposed and Final NPL listing rules for FY 02/03. Any questions regarding NPL listing policies or technical assistance should be directed to the State, Tribal and Site Identification Center of OERR.

iv. Core Program Funding

For FY 2003 it is important that Regions provide funding for State and Tribal Core needs at a level approximately equivalent to the FY 1996-2001 average annual funding, within available resources. If, due to resource constraints or a reduced level of eligible State/Tribal Core needs, Regions plan to fund a State or Tribe at less than 90% of the FY 1996-2001 average level for that State or Tribe, notification to Headquarters is required.

Through the end of FY 02, Brownfields Voluntary Cleanup Programs are funded under Superfund Core Program Cooperative Agreements under the authority of CERCLA 104(d) with Superfund appropriations. Starting in FY03, Superfund Core Program Cooperative Agreements will no longer be the vehicle for funding these agreements. Due to the passage of the new Brownfields law (Public Law 107-118), FY 03 funding for state and tribal response programs (which includes Brownfields VCP's) will be provided under the authority of CERCLA 128(a). If the President's FY 03 budget passes, the CERCLA 128 grant program will be financed from new appropriations under categorical State and Tribal Assistance Grants (STAG) money, not Superfund money. Superfund money from FY02 and before that was allocated to Brownfields Voluntary Cleanup

Programs or Targeted Brownfields Assessments (including money that is deobligated and reobligated) may continued to be used in Superfund Core Program Cooperative Agreements. Please note that this Brownfields-related Superfund money may not be used to fund CERCLA 128(a) cooperative agreements with states and tribes.

I.B.3 Encouraging a Customer Orientation

To provide superior customer service, the following priorities established in FY 98 will continue in FY 02/03:

- Enhance service to internal and external EPA Superfund customers, as well as to regional customers by providing timely, accurate information;
- Promote effective team performance by mentoring and providing leadership that adapts to the person and the situation, and by providing tools for teams to use in becoming more effective and in solving performance problems; and
- Enhance the readiness of regional staff in dealing with emergency situations.

I.B.4 Brownfields

a. History

EPA's Brownfields Economic Redevelopment Initiative is a comprehensive approach to empower states, communities, and other stakeholders to prevent, assess, safely clean-up, and sustainably reuse Brownfields. EPA defines Brownfields as **abandoned, idled, or under-used industrial or commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination.** Through the Brownfields Action Agenda, announced by EPA January 1995, EPA and other Federal agencies are focusing on clarifying environmental liability and clean-up issues through issuance of prospective purchaser agreements and comfort status letters, providing funding for demonstration pilot projects and other search efforts, initiating partnerships with key stakeholders, conducting outreach activities, implementing job development and training programs, and addressing environmental justice concerns. The Agency has worked with States, cities, Federally recognized Indian Tribes, community representatives, other Federal Agencies, and other stakeholders to implement the many commitments made in January 1995.

b. Brownfields National Partnership Action Agenda

EPA convened an interagency working group of more than 20 Federal departments and agencies to coordinate Brownfields activities. The workgroup has developed the National Partnership Action Agenda, which includes specific commitments of resources and activities supporting Brownfields from EPA and its Federal partners (HUD, HHS, DOC, GSA, DOT and others) as well as non-Federal partners. The National Partnership demonstrates how coordinated action on Brownfields cleanup and redevelopment at the Federal level can help support efforts at the local level.

c. Brownfields Pilots

As part of the Brownfields Action Agenda, the Agency has awarded 362 Brownfields Assessment Demonstration Pilots that are funded through cooperative agreements of up to $200,000 each for a two-year period. The Brownfields pilot program is intended to provide EPA, states, local governments, and Federally recognized Indian tribes with useful information and new strategies for promoting a unified approach to environmental assessment, clean-up, and reuse. EPA also has 37 Brownfields Job Training and Development Demonstration Pilots, and 104 Brownfields Clean-up Revolving Loan Fund (BCRLF) Pilots. The Job Training Pilots are each funded up to $200,000 over two years, and bring together affected stakeholders to address the issue of providing environmental employment and training for residents in communities impacted by Brownfields. The individual BCRLF Pilots are

each funded up to $1,000,000 while coalition pilots are eligible for up to $1,000,000 per eligible entity within the coalition. The BCRLF Pilots enable States, political subdivisions, and Indian Tribes to make low-interest loans to facilitate the clean-up and redevelopment of Brownfields.

In addition to the Assessment, Job Training and BCRLF pilots, EPA, in partnership with more than 15 Federal agencies, has designated 28 Brownfields Showcase Communities as part of its National Partnership commitments. These Showcase Communities have three main goals: to promote environmental protection, economic redevelopment and community revitalization through assessment, clean-up and sustainable reuse of Brownfields; to link Federal, state, local and non-governmental action supporting community efforts to restore and reuse Brownfields; and to develop national models demonstrating the positive results of public and private collaboration addressing Brownfields challenges.

d. Targeted Brownfields Assessments

EPA's Targeted Brownfields Assessment (TBA) program is designed to help States, Tribes, and municipalities especially those without Brownfields Assessment Demonstration Pilots, minimize the uncertainties of contamination associated with Brownfields. Under the TBA program, EPA provides funding and/or technical assistance for environmental assessments at Brownfields sites. TBA supplements and works with other efforts under EPA's Brownfields Initiative to promote clean-up and redevelopment of Brownfields.

e. Tax Incentive

Originally signed into law in August 1997, the Taxpayer Relief Act (Public Law 105-34) included a tax incentive to spur the cleanup and redevelopment of brownfields in distressed urban and rural areas. Federal tax law generally requires that those expenditures that increase the value or extend the useful life of a property—or those that adapt the property to a different use—be capitalized; and, if the property is depreciable, that the costs be depreciated over the life of the property. Prior to the Brownfields Tax Incentive, many environmental remediation expenditures fell under these restrictions, and had to be capitalized over time.

Under the Brownfields Tax Incentive, environmental cleanup costs became fully deductible in the year they are incurred, rather than having to be capitalized. The government estimates that the tax incentive costs approximately $300 million in annual tax revenue. The tax incentive is expected to leverage $3.4 billion in private investment and return 8,000 brownfields to productive use. This ability to spur investment in blighted properties and revitalize communities makes the tax incentive a valuable tool for restoring brownfields. On December 21, 2000, the tax incentive was extended through December 31, 2003, and geographic restrictions on use of the tax incentive were removed.

I.B.5 Oil

The Agency shares responsibility with the United States Coast Guard (USCG) and other agencies for implementing major provisions of the Clean Water Act (CWA) and the Oil Pollution Act of 1990 (OPA). EPA will work on finalizing proposed revisions to the Oil Pollution Prevention regulation, also known as the Spill Prevention, Control, and Countermeasure (SPCC) regulation; work with facilities on ensuring compliance with the SPCC regulation; continue the review, inspection, and approval of facility response plans (FRP); continue the development and improvement of area contingency plans (ACP) and participation in area drills and other exercises; and respond to oil spills, or direct, monitor or support others' responses, in accordance with the NCP.

I.B.6 Government Paperwork Elimination Act (GPEA)

This act provides new rules on the way the Agency seeks information from the public. GPEA requires Federal agencies to provide for the (1) option of electronic maintenance, submission, or disclosure of information, when practicable, as a substitute for paper; and (2) use and accept electronic signatures, when practicable. This must be done by the end of the FY 03. To comply, EPA submitted to the Office of Management and Budget (OMB), in FY 00, plans and schedules for GPEA implementation. EPA has begun to implement GPEA by developing electronic reporting options and a Central Data Exchange (CDX) facility for receipt of electronic information.

I.C SUPERFUND REFORMS

The Superfund program has achieved substantial progress in cleaning up hazardous waste sites and protecting human health and the environment during its more than 20 year existence. In addition, there have been serious proposals for improving the program, making it faster, fairer, and more efficient. Since 1993, EPA has launched three rounds of reforms to Superfund to address criticisms raised by affected parties and to improve the pace, cost, and fairness of the program. Each set of reforms consists of various initiatives and pilots focusing on changes to the program that can be implemented within the existing statutory framework. These reforms were intended to accomplish different goals, ranging from strengthening the program prior to reauthorization to testing concepts developed during Congressional debate on actual legislation. As a result of all the new and continuing reforms, Superfund is a dramatically different program today than it was at its inception.

EPA and other Superfund stakeholders have worked since the inception of the program to reduce risks posed by abandoned and uncontrolled hazardous waste sites. Since 1980, EPA has evaluated more than 41,000 sites, conducted more than 6,500 early actions, and completed construction at over 759 of the more than 1,400 sites on the NPL in an effort to protect human health and the environment. Final remedies have been selected at more than 1,000 sites, and design and implementation of the remedies is underway. In addition, the reforms have helped to improve the overall performance of the program. EPA has effectively reduced the pursuit of small volume (i.e., *de minimis* and de micromis) contributors by private parties, increased public involvement in the cleanup process by establishing Community Advisory Groups and promoting the availability of Technical Assistance Grants, promoted economic development and environmental justice with Brownfields and job training initiatives, and saved in excess of $1 billion in estimated response costs through the National Remedy Review Board and the Remedy Update Reform. EPA has streamlined cleanups, reduced litigation and bureaucracy and made common sense improvements to Superfund.

On June 23, 1993, EPA announced 17 initiatives aimed at: (1) increasing enforcement fairness and reducing transaction costs; (2) improving cleanup effectiveness and consistency; (3) expanding meaningful public involvement; and (4) enhancing the State role in the Superfund program. On September 30, 1994, EPA issued the "Superfund Administrative Reforms Closeout Report," which identified lessons learned from the first round of reforms. It also closed out several of the initiatives and identified a group of continuing initiatives to be integrated into the Superfund program.

In February 1995, EPA announced an additional 12 initiatives designed to improve the Superfund program. This second round of reforms encompassed six general areas: enforcement; economic redevelopment; community involvement and outreach; environmental justice; consistent program implementation; and State and Tribal empowerment.

In October 1995, EPA announced the third and final round of "Superfund Reforms." This third round of "common sense" reforms was intended to assist State and local governments, communities, and industries involved in cleanups to more easily: (1) make cost-effective cleanup choices that protect public health and the environment; (2) reduce litigation so more time and money can be spent on cleanup and less on lawyers; and (3) help communities become more informed and involved so that cleanup decisions make the most sense at the community level.

The FY 02/03 priorities for Superfund reforms are: (1) completion of ongoing reform commitments; (2) consistent implementation of reform initiatives in HQ and the regions; (3) refinement of the reforms based on experience to date; and (4) further evaluation of reforms and enhanced communication of impacts and results to stakeholders. EPA will

assure nationally consistent implementation of the reforms through the following measures: aggressive efforts to assure that program implementers and their managers are familiar with each reform; increased understanding of the circumstances giving rise to the reforms; and enhanced management accountability based on appropriate monitoring of results and program accomplishments. [For additional information on this topic, please see Appendix C (OECA).] The Superfund Reforms web page (www.epa.gov/superfund/programs/reforms) will be used to share reform experiences from site-to-site and region-to-region, as it continues to refine and improve the ways the Superfund program is implemented.

I.C.1 Improving Lead (Pb) Risk Assessments and Cleanup Decisions

Superfund Reform 6c, utilize expert workgroup on lead (Pb), provides for making fuller use of the work of the Technical Review Workgroup (TRW) for project managers that manage lead site cleanups. The TRW is a group of technical experts from EPA Regional offices and several HQ offices that provide advice on the assessment of lead risks. Two steps have been taken to improve better decisions. First, a group named the Lead Sites Workgroup (LSW) has been formed. The LSW is made up of site managers from across the country that address lead contamination, some representatives of the TRW, and relevant HQ offices. Second, the activities of both of these groups are discussed with the Lead Sites Consultation Group (LSCG), which is composed of Regional Waste Management Division Directors or their designees. This group is chaired by the Director of OERR. The interactions among these groups should help to ensure that priorities are set according to program needs and better science will be communicated in the support of lead cleanup decisions.

I.C.2 Measures

The following measures have been identified for FY 02/03 to evaluate the impact that Superfund reforms have had on the program. For more information on this topic, please see Appendix C, Enforcement.

1. Number of proposed cleanup decisions reviewed by the National Remedy Review Board and the estimated impact of reviews.

2. Number of existing RODs for site cleanups updated based on (1) the latest in scientific information and technological advancements, or (2) non-scientific changes and the estimated dollar savings as a result of reviews.

3. Number of partial site deletions (Federal facility and other NPL sites) initiated by EPA to return property to productive uses return, and the economic and other impacts on the community.

4. Number of Federal Facility Agreements revised to reflect changes in priority activities within DoD and Department of Energy (DOE) facilities (i.e., number of agreements and number of milestones revised).

5. Number of negotiations where EPA offered to compensate a portion of the orphan share and the total dollar amount offered; and number of settlements where EPA compensated for a portion of the orphan share and the total dollar amount compensated.

6. Number of settlements establishing interest-bearing special accounts for future site costs and the total dollar amount set aside in such accounts.

7. For each section 106 UAO issued, the number of parties identified at the site, the number of parties excluded and documentation of the reasons for exclusion.

8. Number of settlements with de micromis parties and number of de micromis parties entering into such settlements.

9. Number of Prospective Purchaser Agreements (PPAs) issued; the number of comfort/status letters issued.

10. Number of sites where EPA discussed its previous and planned oversight activities with capable and cooperative PRPs, sent a letter to the PRPs describing efforts to control/reduce oversight, and issued an oversight bill as appropriate.

11. Number of sites archived from CERCLIS.

I.D. SUPERFUND REDEVELOPMENT INITIATIVE

Superfund cleanups address real threats to public health and the environment and have been instrumental in returning sites to productive uses. In the last five years, EPA has become increasingly aware of the importance of fully exploring future use opportunities at Superfund sites with its partners before selecting and implementing cleanup remedies. This shift in thinking has resulted in Superfund sites, which were once thought to be unusable, being "recycled" back into productive use. EPA is encouraging the reuse of Superfund sites in several ways, such as making cleanup decisions that are consistent with intended reuse and limiting the liability of interested developers. Large and small businesses, shipping terminals, community libraries, sports fields, and golf driving ranges are just a few of the many ways in which Superfund sites are being reused following their cleanup.

The Superfund program is undertaking a nationally coordinated effort — the Superfund Redevelopment Initiative (SRI) — to facilitate the return of Superfund sites to productive use. Announced on July 23, 1999, this initiative builds on the success noted above, as well as on the achievements of the Superfund reforms focused on economic redevelopment. In carrying out this initiative, the program priority remains the protection of human health and the environment. While operating within the current regulatory and statutory framework, EPA will take full advantage of its administrative flexibility in implementing SRI. The Superfund Program remains committed to accelerating the pace of cleanups without compromising its "enforcement first" approach, which includes the recovery of costs from those responsible for the pollution. SRI will focus on the activities that support remedy selection and design. EPA does not anticipate reopening formal decisions already made, such as RODs and enforcement orders and decrees.

Under SRI, pilot projects were selected to enhance the involvement of local governments in determining the potential future uses of Superfund sites and to demonstrate tools that can be used to facilitate the redevelopment of Superfund sites. Ten pilot sites were selected during FY 99 and forty additional pilots were selected during FY 00. All pilots will be monitored and evaluated for lessons learned and potential future program enhancements. The other components of SRI include: revisions to policy and guidance where needed, and new guidances and technical tools; outreach to share information about site reuses, the tools that can help stakeholders repeat those successes at other sites, and the reuse potential of specific sites; and partnerships with other public and private entities with resources or other capabilities to support the redevelopment of the sites. (Please see the Superfund Redevelopment web site at www.epa.gov/superfund/programs/recycle/index.htm). The reuse of Superfund sites is taking place now, and with a coordinated national effort, EPA can accomplish even more.

I.E SUBJECT MATTER EXPERTS

The following exhibit identifies the subject matter experts for Chapter I Program Goals and Priorities.

EXHIBIT I.1 SUBJECT MATTER EXPERTS

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